STATE OF MICHIGAN

COURT OF APPEALS

VICKI S. SHERIDAN,

Plaintiff-Appellant,

v

FOREST HILLS PUBLIC SCHOOLS,

Defendant-Appellee,

and

VERN KNAPP and CITIZENS INSURANCE COMPANY OF AMERICA,

Defendants.

FOR PUBLICATION
September 25, 2001
9:25 a.m.

No. 215572
Kent Circuit Court
LC No. 96-002163-CZ

Updated Copy
December 7, 2001

Before: Zahra, P.J., and White and Hoekstra, JJ.

ZAHRA, P.J.

Plaintiff Vicki S. Sheridan appeals as of right the circuit court's order granting defendant Forest Hills Public Schools[1] summary disposition under MCR 2.116(C)(10) in this hostile work environment sexual harassment case brought under the Civil Rights Act (CRA), MCL 37.2101 *et seq*. We affirm.

FACTS

This case arises out of the alleged sexual harassment of plaintiff by Vern Knapp. Both plaintiff and Knapp were custodians employed by defendant when the alleged sexual harassment occurred. The genuine and material facts viewed in a light most favorable to plaintiff establish the following.[2] On August 26, 1993, plaintiff informed defendant's assistant superintendent of

[1] We refer to defendant-appellee Forest Hills Public Schools as "defendant." The trial court entered a stipulated order of dismissal with respect to Citizens Insurance Company and ordered a default judgment against Vern Knapp. Neither Citizens nor Knapp is a party to this appeal.

personnel that she was sexually harassed on the job. In a follow-up meeting on August 31, 1993, plaintiff complained that, in the course of her employment on August 23, 1993, Knapp propositioned her and physically exposed himself to her. Defendant immediately began an investigation that culminated in the termination of Knapp's employment on October 4, 1993.

After reporting the incident, plaintiff took a leave of absence and was subsequently placed on a medical leave. Plaintiff never returned to work. On February 28, 1996, plaintiff brought this suit, specifically alleging that Knapp raped her in defendant's Community and Aquatic Center (the "pool building") in the spring of 1991.[3] Plaintiff also alleged that Knapp repeatedly harassed and abused her with "sexual demands, unconsented touchings and propositions to engage in sexual activities." Plaintiff maintained that defendant was liable pursuant to the CRA for Knapp's actions under a theory of respondeat superior.[4]

Defendant brought a motion for summary disposition, arguing, in relevant part, that plaintiff never reported any acts of assault or sexual harassment to defendant before August 1993. Defendant maintained that there was no evidence that it failed to take prompt remedial action against Knapp. In the absence of such evidence, defendant argued, it could not be held liable for the actions of Knapp. The trial court granted defendant's motion for summary disposition. This appeal followed.

A. The management structure of Forest Hills Public Schools

Defendant is a suburban Grand Rapids school district that is operated under the supervision of a superintendent. Employee matters are administered through the assistant superintendent for personnel. Both plaintiff and Knapp were custodians for defendant. Custodians are supervised by the director of buildings and grounds who reports to the director of operations. The director of operations reports directly to the assistant superintendent for personnel. Custodial crews are divided by facility. At each facility, one custodian is designated the "head custodian." The head custodian is responsible for noting attendance and insuring that custodial work is properly completed. When a custodial crew consists of more than one custodian per shift, one member of the shift is designated a "lead custodian," who assumes the duties of the head custodian for that shift. All custodians are members of a collective bargaining

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[2] Any facts set forth in footnote one of the dissenting opinion that are inconsistent with or in addition to the factual recitation set forth in the majority opinion are either immaterial to this dispute or unsupported by the uncontroverted evidence presented in support of defendant's motion.

[3] Plaintiff's complaint and brief on appeal alleged that the rape occurred in April 1991. However, plaintiff testified in deposition that the rape occurred in April 1990.

[4] Plaintiff filed her complaint against Forest Hills Public Schools, Donald J. Finch, Linda Schmitt VanderJagt, and Vern Knapp, jointly and severally, and Citizens Insurance Company of America, alleging one count of hostile work environment sexual harassment, one count of gross negligence, three counts of intentional infliction of emotional distress, and one count of bad faith on the part of Citizens Insurance Company. Soon after the complaint was filed, Finch and VanderJagt were voluntarily dismissed from the suit.

unit. The director of buildings and grounds and all persons above him are not members of the collective bargaining unit. The lead and head custodians do not have authority to hire, fire, or discipline employees or to render recommendations regarding pay, hours, or job transfers. Such decisions are made by the superintendent on the basis of recommendations from the director of buildings and grounds, the director of operations, and the assistant superintendent for personnel.

B. Claims of harassment before August 1993

1. Knapp's harassment of plaintiff

Plaintiff testified that in April 1990 Knapp entered the pool building and raped her. Plaintiff admitted that she did not report the rape to anyone. Plaintiff also testified that after the rape, Knapp harassed her by calling her pager repeatedly and by loitering outside the pool building while plaintiff worked. Plaintiff informed Donald Finch, the director of buildings and grounds, and Kathy Knapp, the head custodian at the pool building, that she did not feel safe working nights.[5] Plaintiff asked that security be provided during her shift. However, plaintiff did not complain to anyone that Knapp was harassing her. Plaintiff also testified that in 1991 Knapp entered the pool building and assaulted her in the boiler room by kissing her on the lips and touching her inappropriately. Again, plaintiff admitted that she did not report this incident to anyone.

Later in 1991, plaintiff met with Finch and Terri Handlin, director of the community education program and pool building administrator, to discuss job-related problems, including plaintiff's security concerns and plaintiff's conduct of bringing her children to work.[6] Handlin's handwritten notes from the meeting indicate that plaintiff believed Knapp was calling her pager and loitering outside the pool building while plaintiff worked. The notes also indicate, however, that plaintiff did not want Finch or Handlin to assist plaintiff in dealing with Knapp. Plaintiff's recollection of the meeting is consistent with Handlin's notes. Plaintiff testified that Handlin and Finch offered to assist her if Knapp was causing her problems. However, plaintiff declined their help, indicating that she "will take care of it [and] handle it" herself. Plaintiff admitted that she did not tell Finch or Handlin about the rape, and she did not provide them with any specifics

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[5] We disagree with the dissent's statement, "[plaintiff] did not report the rape to defendant because Knapp's wife was her supervisor . . . ." Kathy Knapp, who at the time was the spouse of Vern Knapp, was a head custodian at the pool building. Plaintiff testified that she left notes on Kathy Knapp's desk requesting security at the building during her shifts. While plaintiff indicated the situation was "awkward," nothing in the record presented to this Court indicates that plaintiff believed Kathy Knapp was her supervisor. In fact, when specifically asked to name her supervisors at the pool building, plaintiff named Finch and Paul Northuis. Thus, there exists no factual basis on which one may reasonably conclude that plaintiff did not report the alleged rape *because* Kathy Knapp was her supervisor.

[6] Defendant's witnesses claimed that the meeting occurred in August 1991. Plaintiff claims that the meeting occurred in May 1991. The specific date of this meeting is not material to the issues before this Court.

about the assault in the boiler room. Handlin discussed the matter with a number of people, including Linda VanderJagt, the assistant superintendent for personnel.

Plaintiff also met with VanderJagt, Paul Northuis, the director of operations, and a union representative sometime in the summer of 1991 to discuss her work situation. VanderJagt testified that she asked plaintiff to attend the meeting to discuss plaintiff's claims that Knapp was making noises outside the pool building and calling plaintiff's pager.[7] VanderJagt asked plaintiff if Knapp was bothering her. Plaintiff responded that it was none of their business. Plaintiff claimed that she and Knapp were friends. Plaintiff indicated that she did not want the school involved in her personal life. VanderJagt focused on Knapp because it was brought to her attention that plaintiff had mentioned his name as being the person calling her pager and loitering outside the pool building while she worked. Additionally, VanderJagt was aware that Knapp was previously disciplined because of a 1988 complaint of sexual harassment by another employee.

After VanderJagt met with plaintiff, she met with Knapp. Because plaintiff did not make any complaint against Knapp, VanderJagt merely informed Knapp that there had been rumors that Knapp had made "inappropriate statements or gestures." VanderJagt reminded Knapp that, pursuant to the 1988 discipline, any further acts of harassment would result in the termination of his employment. VanderJagt did not discipline Knapp at that time.

In September 1991, plaintiff was assigned to work at Northern High School (Northern). Shortly thereafter, Knapp applied for and received a custodial position at Northern. Plaintiff testified that after Knapp received the position she told Mark Scoby, the head custodian at Northern, that "[Knapp] better not come on my side of the building." Scoby specifically inquired about what had happened at the pool building. Plaintiff informed Scoby that the pool incident "was bad." However, plaintiff admitted that she did not provide Scoby with specifics and did not tell Scoby that she had been raped or sexually assaulted.[8] Plaintiff testified that Scoby told her not to worry and that if anything happened at Northern, "we'll take care of it."

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[7] Plaintiff testified that she cannot recall whether Knapp's conduct was discussed in this meeting. Thus, VanderJagt's recollection of the matters discussed in this meeting is uncontroverted by plaintiff.

[8] We disagree with the dissent's statement that plaintiff testified that Scoby and Pete Cleven, the lead custodian on her shift at Northern, were aware of the details of Knapp's prior harassment. While plaintiff testified that Scoby and Cleven seemed to be generally aware that something occurred between plaintiff and Knapp at the pool building, plaintiff did not testify that she informed them of the details of the alleged incidents of harassment. Plaintiff admitted that she did not provide Scoby with specifics or tell him that she had been raped or sexually assaulted. Plaintiff testified that she was "pretty sure" she told Cleven that she had been raped. Plaintiff claimed that she asked Cleven not to tell anyone about it. Cleven denies that plaintiff ever told him she was raped by Knapp. Cleven testified that on August 23, 1993, plaintiff informed him that earlier that day Knapp had propositioned her and exposed himself to her. Cleven claims that, in the course of that conversation, plaintiff told him for the first time that she previously had a consensual sexual encounter with Knapp and asked Cleven not to tell anyone about that encounter. Viewing the facts in a light most favorable to plaintiff, we conclude that plaintiff

Plaintiff claimed that in the summer of 1993 Knapp tried to communicate with her and "rubbed up" against her when she and Knapp were assigned to work together at Northern. Plaintiff complained to Scoby about Knapp making physical contact with her. Scoby confronted Knapp and told plaintiff that she could work in a different area. Neither Scoby nor plaintiff informed their immediate supervisor, Finch, or anyone else about the incident of physical contact.

2. Prior complaints against Knapp

In 1988, a female employee claimed that she was sexually harassed by Knapp in the course of her employment. Defendant immediately investigated the complaint and found it to be meritorious. Knapp was disciplined. The discipline included a five-day suspension without pay. Additionally, Knapp was ordered to stay away from the employee who was the victim of his harassment, reassigned, and placed on probation. Shortly after Knapp was suspended in 1988, another female employee informed Finch that she had "problems" with Knapp three years earlier.[9] No specifics were provided to Finch and no formal complaint was made.[10]

ANALYSIS

We review de novo a motion for summary disposition based on MCR 2.116(C)(10). Motions brought under this court rule test the factual support of a claim. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). The moving party has the initial burden of supporting its position with documentary evidence such as affidavits, depositions, admissions, or interrogatory responses. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). The burden then shifts to the opposing party to establish the existence of a factual dispute. *Id.* at 455. If the party opposing the motion fails to present documentary evidence establishing the existence of a genuine and material fact, the motion should be granted. *Id*.; *Aetna Casualty & Surety Co v Ralph Wilson Plastics Co*, 202 Mich App 540, 548; 509 NW2d 520 (1993).

Under the CRA, a prima facie case of hostile work environment sexual harassment includes the following five elements:

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informed Cleven of the assault, but denied him the authority to report the assault to others.

[9] The dissent's discussion regarding alleged circumstances surrounding that employee's report of the 1985 conduct to Finch is immaterial to the issue in this case. Knapp was investigated and disciplined in 1988. He was informed that any future sexual harassment would result in his termination. The fact that Knapp's employment was not terminated for conduct that was claimed to have occurred in 1985 was consistent with the progressive discipline imposed on Knapp. There was no evidence that Knapp engaged in any sexual harassment after the 1988 discipline until 1993, at which time Knapp was promptly investigated and his employment was terminated.

[10] After plaintiff asserted her complaint against Knapp in August 1993, the employee involved in the 1985 incident was interviewed and for the first time disclosed specific facts regarding the 1985 incident. Defendant determined that this complaint was also meritorious.

(1) the employee belonged to a protected group;

(2) the employee was subjected to communication or conduct on the basis of sex;

(3) the employee was subjected to unwelcome sexual conduct or communication;

(4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and

(5) respondeat superior. [*Chambers v Trettco, Inc*, 463 Mich 297, 311; 614 NW2d 910 (2000), quoting *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993).]

The last element is at issue here. As a general rule, "an employer may avoid liability 'if it adequately investigated and took prompt and appropriate action upon notice of the alleged hostile work environment.'" *Radtke, id.* at 396, quoting *Downer v Detroit Receiving Hosp*, 191 Mich App 232, 234; 477 NW2d 146 (1991). Thus, an employer must have actual or constructive notice of the alleged harassment before liability will attach to the employer. *Radtke, supra* at 397, n 44, citing *Downer, supra* at 235; *Grow v W A Thomas Co*, 236 Mich App 696, 702-703; 601 NW2d 426 (1999), citing *Downer, supra*; *Kauffman v Allied Signal, Inc*, 970 F2d 178, 183 (CA 6, 1992). In *McCarthy v State Farm Ins Co*, 170 Mich App 451; 428 NW2d 692 (1988), this Court explained what was meant by actual or constructive knowledge.

"Where . . . the plaintiff seeks to hold the employer responsible for the hostile environment created by the plaintiff's supervisor or co-worker, she must show that the employer knew or should have known of the harassment in question and failed to take prompt remedial action. . . . The employee can demonstrate that the employer knew of the harassment by showing that she complained to higher management of the harassment . . . or by showing the pervasiveness of the harassment, which gives rise to the inference of knowledge or constructive knowledge." [*Id*. at 457, quoting *Henson v Dundee*, 682 F2d 897, 905 (CA 11, 1982).]

See *Hartleip v McNeilab, Inc*, 83 F3d 767, 776-777 (CA 6, 1996). Courts must apply an objective standard of review when considering whether the employer was provided adequate notice. *Chambers, supra* at 319. "[N]otice of sexual harassment is adequate if, by an objective standard, the totality of the circumstances were such that a reasonable employer would have been aware of a *substantial probability* that sexual harassment was occurring." *Id.* (emphasis added).

A. Defendant did not have actual notice of a hostile workplace

Applying these legal principles to this case, we conclude that defendant did not have actual knowledge of the sexual harassment before August 1993 because plaintiff did not complain about the harassment to higher management. The term "higher management" is not

defined in *McCarthy*[11] or any subsequent case involving a claim under the CRA. We define this term to mean someone in the employer's chain of command who possesses the ability to exercise significant influence in the decision-making process of hiring, firing, and disciplining the offensive employee. This definition is consistent with our Supreme Court's analysis of harassment alleged by "supervisors." See *Chambers, supra* at 318-319; *Champion v Nation Wide Security, Inc*, 450 Mich 702, 705; 545 NW2d 596 (1996); *Radtke, supra* at 396-397.[12]

By defining "higher management" as we have, we are identifying management employees who have actual authority to effectuate change in the workplace. These are the type of employees implicitly referred to as "higher management" in *McCarthy*. Moreover, the purpose of defining the term "higher management" is to identify the employees whose knowledge may fairly be imputed to the employer. In *Chambers*, our Supreme Court observed that the term "employer" is statutorily defined under the CRA to include the employer and its agents. *Chambers, supra* at 311. Because these "higher management" employees are vested by the employer with actual authority to effectuate change in the workplace, principles of agency law support the conclusion that the knowledge they possess regarding conditions in the workplace would properly be imputed to the employer.

We reject plaintiff's contention that defendant possessed actual knowledge of a hostile workplace because plaintiff informed the head custodian at Northern of some of her concerns regarding Knapp.[13] All recommendations regarding hiring, firing, pay, job assignments, hours,

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[11] As noted earlier, *McCarthy* generally stated "[t]he employee can demonstrate that the employer knew of the harassment by showing that she complained to higher management." *McCarthy, supra* at 457, quoting *Henson, supra* at 905.

[12] To the extent that the dissent relies on federal cases involving sexual harassment claims under title VII, that reliance is misplaced. In *Chambers*, our Supreme Court held that federal principles of vicarious liability related to sexual harassment claims brought under the federal title VII do not apply to claims brought under Michigan's CRA. The Court reasoned that federal principles are contrary to Michigan case law and the express language of the CRA. *Chambers, supra* at 303, 316. The Court noted that the CRA is significantly distinguishable from title VII insofar as the CRA specifically defines "employer" to include both the employer and the employer's agents. *Id*. at 310, 315. The Court concluded that common-law agency principles determine when an employer is liable for sexual harassment committed by its employees under the CRA, whereas federal principles of vicarious liability pertinent to title VII are founded in negligence. As such, the Court refused to apply federal principles to sexual harassment claims alleging employer liability under the CRA. *Id*. at 311, 314-316. See *Chambers v Trettco, Inc (On Remand)*, 244 Mich App 614, 618; 624 NW2d 543 (2001) (recognizing that under federal law, once "a plaintiff has established that a supervisor created a hostile working environment, the burden shifts to the employer to disprove vicarious liability for the supervisor's actions," but that "under state law, vicarious liability will be found only where the plaintiff has carried the burden of proving respondeat superior"). Given that clear mandate by our Supreme Court, we cannot apply federal title VII principles of vicarious liability in defining the term "higher management" as it relates to a claim under the CRA. We instead rely on the express language of the CRA and the cited Michigan cases in determining the proper standard. *Chambers, supra*, 463 Mich 303, 316.

[13] Plaintiff argues that the head custodian should be considered "higher management" as that term is used in *McCarthy* because the head custodian had the ability to assign work. We disagree. If we were to adopt that standard, the conscientious employer desiring to avoid liability would be

and discipline of custodians were made by Northuis, Finch, and VanderJagt. Therefore, Northuis, Finch, and VanderJagt are the only individuals involved that could reasonably have their knowledge imputed to defendant. Significantly, plaintiff did not tell any of these individuals about the assaults or sexual harassment until August 1993. Plaintiff testified that before August 1993, she simply complained that Knapp "bothered" her. She concedes that she did not directly state to her "recognized" supervisors that she felt the harassment was of a sexual nature.

Our conclusion that plaintiff did not report any alleged sexual harassment so as to impute knowledge to defendant is not altered when considered in light of defendant's express sexual harassment policy. Defendant's sexual harassment policy states, in pertinent part:

> Any employee who has been subject to or witnessed sexual harassment in the workplace is requested and encouraged to report the sexual harassment to an appropriate supervisor or to the Assistant Superintendent for Personnel and to cooperate in any subsequent investigation.

Under Michigan law, an employer may enhance its employment relationship with its employees through express policies and practices. See *In re Certified Question*, 432 Mich 438, 453-454; 443 NW2d 112 (1989), quoting *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 613; 292 NW2d 880 (1980); see also *Heurtebise v Reliable Business Computers, Inc*, 452 Mich 405, 412-414; 550 NW2d 243 (1996). However, not every written employment policy has the force of a binding contract. See *Heurtebise* and *In re Certified Question, supra* at 455-456 (observing that a policy implemented by an employer by nature is a flexible framework for operational guidance, not a perpetually binding contractual obligation). Here, we are not asked to determine whether defendant's sexual harassment policy bound defendant to provide greater protection than is provided under the CRA, and we do not specifically decide the matter. Furthermore, even viewing the sexual harassment policy language in a light most favorable to plaintiff, the policy term "appropriate supervisor" is consistent with "higher management" as that term is used in connection with the CRA.

Significantly, there is no evidence that plaintiff reported any alleged harassment to an "appropriate supervisor" as encouraged in the policy. As previously stated, plaintiff did not notify any "higher management" employee of sexual harassment. In addition, plaintiff's deposition testimony indicates that she did not view Scoby or Cleven as her supervisors.[14]

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required to determine its lowest category of employee and train every employee above that category regarding the proper method of addressing or reporting every type of civil rights claim. This places too high a burden on the employer and would likely be ineffective in any event. Moreover, it is unlikely that every skilled and unskilled laborer possesses the management skills required to effectively address such claims.

[14] Plaintiff's testimony includes:

> [*Defendant's counsel*]: And Mr. Cleven was the lead custodian?
>
> [*Plaintiff*]: Yes.

Moreover, plaintiff did not tell Scoby of any specific harassment. She claims that she was "pretty sure" she told Cleven that Knapp raped her. However, given plaintiff's testimony that she did not want Cleven to tell anyone about the incident, it is unreasonable to conclude that plaintiff reported the incident to Cleven as encouraged under the policy for the purpose of stopping such harassment. Scoby's alleged statements to plaintiff further establish that any statement plaintiff made to Cleven regarding alleged harassment was not made in reliance on the policy. As noted by the dissent, plaintiff testified that Scoby told her "[w]e'd handle [any problems with Knapp] in our building; [and that plaintiff] didn't have to go to the supervisors." Implicit in that statement is Scoby's recognition that he was not an appropriate supervisor to whom to report sexual harassment under the policy. It is undisputed that Cleven was an even lower level employee than Scoby. Under these circumstances, it cannot be said that plaintiff reported any alleged sexual

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> [*Defendant's counsel*]: He was not your supervisor; right?
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> [*Plaintiff*]: Right.
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> * * *
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> [*Defendant's counsel*]: So your testimony is that Mr. Cleven had asked you on several occasions what had happened at the pool regarding Vern Knapp, and ultimately in the fall of '92 you told him that Vern Knapp had raped you at the pool; correct?
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> [*Plaintiff*]: I believe so. I think so.
>
> [*Defendant's counsel*]: Are you certain of that or not?
>
> [*Plaintiff*]: I'm pretty sure I finally told him that - -
>
> [*Defendant's counsel*]: At this point you haven't told your supervisors at Forest Hills; right?
>
> [*Plaintiff*]: Right.
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> * * *
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> [*Plaintiff*]: And I spoke to the supervisor or maybe Pete—or not supervisor—excuse me—the head custodian, Mark Scoby.

In light of plaintiff's testimony, we do not consider Cleven's statement that he believed he and Scoby were plaintiff's supervisors as material to whether plaintiff complied with defendant's sexual harassment policy. Plaintiff admitted Scoby and Cleven were not her supervisors. Moreover, even if Scoby and Cleven were considered supervisors of plaintiff, no evidence supports the conclusion that they were "appropriate supervisors" under defendant's sexual harassment policy.

harassment so as to impute knowledge of the harassment to defendant. For these reasons, we conclude that defendant did not have actual knowledge of sexual harassment in the workplace.

B. Defendant did not have constructive knowledge of a hostile workplace

We must next address whether defendant had constructive knowledge of sexual harassment in the workplace. '"The employee can demonstrate that the employer knew of the harassment . . . by showing the pervasiveness of the harassment, which gives rise to the inference of knowledge or constructive knowledge.'" *McCarthy, supra* at 457, quoting *Henson, supra* at 905.

We conclude that the alleged sexual harassment in the present case was not substantially pervasive enough to infer that defendant had notice of it. Accepting as true all of plaintiff's allegations, we note that plaintiff was sexually harassed on four separate occasions over a three-year period. The rape occurred in 1990 or 1991, the sexual assault occurred in 1991, the incident in which Knapp "rubbed up" against plaintiff occurred around 1993, and the final incident occurred in August 1993.

We find no merit in plaintiff's contention that defendant should have known of the sexual harassment on the basis of defendant's knowledge of the prior instances of sexual harassment by Knapp that were alleged to have occurred in 1985 and 1988, together with plaintiff's generalized complaints. On the basis of information it had gathered, defendant was concerned about plaintiff's situation. As a result, defendant specifically inquired of plaintiff regarding her employment situation. When defendant inquired about plaintiff's "problems," plaintiff did not disclose any information about the assaults or sexual harassment. In fact, plaintiff stated that, with the exception of Cleven a couple of years later, she told no one, including co-workers, about the assaults. Moreover, even though defendant had no information substantiating any assaultive or harassing behavior, defendant specifically inquired whether management could intercede with Knapp on plaintiff's behalf and plaintiff indicated that she did not want defendant to interfere. Plaintiff claimed only that she was being "bothered" and plaintiff maintained she would handle the matter herself. Therefore, even with defendant's knowledge of a prior substantiated complaint of sexual harassment against Knapp in 1988, and a second generalized complaint made in 1988 relating to conduct occurring in 1985, defendant had no basis on which to conclude that sexual harassment relating to plaintiff was occurring before August 1993, because plaintiff made no complaints or statements when specifically questioned about Knapp. See *Chambers v Trettco (On Remand),* 244 Mich App 614, 618-619; 624 NW2d 543 (2001). Furthermore, because plaintiff remained silent about these incidents immediately after they occurred, defendant could not have learned of the harassment through other employees.[15]

[15] In regard to the third incident, Knapp's "rubbing up" against plaintiff, plaintiff testified that she immediately complained to Scoby. In response, Scoby directed plaintiff to another work assignment. There is no evidence to suggest that defendant knew of this incident or that this incident was well known in defendant's work environment so as to impute knowledge to defendant. The incident occurred one time and Scoby immediately remedied the problem by moving plaintiff to another work assignment.

In sum, because the rape and sexual assault occurred over a period of two to three years, plaintiff failed to notify her supervisors of the incidents, and plaintiff specifically stated that she was not in need of assistance when defendant inquired whether she needed defendant to intercede with Knapp, the sexual harassment was not, as a matter of law, substantially pervasive enough to put defendant on notice of the sexual harassment.

C. Defendant had no legal duty to inform plaintiff of Knapp's prior acts of sexual harassment

Finally, plaintiff argues that, had defendant informed her that Knapp had previously been disciplined for sexual harassment, she would have informed defendant of Knapp's wrongful conduct sooner. Plaintiff cites no authority to support the proposition that defendant was under a duty to inform her of prior acts of sexual harassment involving co-workers. We are aware of no statute or case law to support such a position and we decline to impose such a duty on employers.

CONCLUSION

Plaintiff failed to present evidence to sustain a claim of respondeat superior liability against her defendant employer for sexual harassment undertaken by a co-worker. There exists no evidence that defendant knew or should have known of the existence of sexual harassment in the workplace. Therefore, the trial court properly granted summary disposition in favor of defendant.

Affirmed.

Hoekstra, J., concurred.

/s/ Brian K. Zahra
/s/ Joel P. Hoekstra